

The Gazette of India



EXTRAORDINARY
PART II—Section 2

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LOK SABHA

The following Bill was introduced in Lok Sabha on the 7th August, 1961:—

BILL No. 39 OF 1961

A Bill to consolidate and amend the law relating to the extradition of fugitive criminals.

Be it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5 1. (1) This Act may be called the Extradition Act, 1961.
 (2) It extends to the whole of India.
 (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title,
extent and
commence
ment.

2. In this Act, unless the context otherwise requires,—

Definitions

- 10 (a) "commonwealth country" means a commonwealth country specified in the First Schedule and includes—
 (i) the Republic of Ireland; and
 (ii) every constituent part, colony or dependency of any commonwealth country specified in the First Schedule or the Republic of Ireland;
15 (b) "conviction" and "convicted" do not include or refer to a conviction which under foreign law is a conviction for contumacy, but the term "person accused" includes a person so convicted for contumacy;

(c) "extradition offence" means—

(i) in relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State;

(ii) in relation to a foreign State other than a treaty State or in relation to a commonwealth country to which Chapter III does not apply, an offence which is specified in, or which may be specified by notification under, the Second Schedule;

(iii) in relation to a commonwealth country to which Chapter III applies, an offence which is specified in, or which may be specified by notification under, the Third Schedule;

(d) "extradition treaty" means a treaty or agreement made by India with a foreign State relating to the extradition of fugitive criminals, and includes any such treaty or agreement made before the 15th day of August, 1947, which extends to, and is binding on, India;

(e) "foreign State" means any State outside India other than a commonwealth country, and includes every constituent part, colony or dependency of such State;

(f) "fugitive criminal" means an individual who is accused or convicted of an extradition offence committed within the jurisdiction of a foreign State or a commonwealth country and is, or is suspected to be, in some part of India;

(g) "magistrate" means a magistrate of the first class or a presidency magistrate;

(h) "notified order" means an order notified in the Official Gazette;

(i) "prescribed" means prescribed by rules made under this Act; and

(j) "treaty State" means a foreign State with which an extradition treaty is in operation.

Application
of Act.

3. (1) The Central Government may, by notified order, direct that all or any of the provisions of this Act other than Chapter III shall apply—

(a) to such foreign State or part thereof; or

(b) to such commonwealth country or part thereof to which Chapter III does not apply; as may be specified in the order.

(2) The Central Government may, by the same notified order as is referred to in sub-section (1) or any subsequent notified order, restrict such application to fugitive criminals found, or suspected to be, in such part of India as may be specified in the order.

5 (3) Where the notified order relates to a treaty State,—

(a) it shall set out in full the extradition treaty with that State;

(b) it shall not remain in force for any period longer than that treaty; and

10 (c) the Central Government may, by the same or any subsequent notified order, render the application of this Act subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the treaty with that State.

15 (4) Every notified order made under this section shall be laid before each House of Parliament, as soon as may be, after it is made.

4. A fugitive criminal shall not be surrendered or returned to a foreign State or commonwealth country— Restriction
on surren-
der.

20 (a) if the offence in respect of which his surrender is sought is of a political character or if he proves to the satisfaction of the magistrate or court before whom he may be produced or of the Central Government that the requisition or warrant for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character;

25 (b) if prosecution for the offence in respect of which his surrender is sought is according to the law of that State or country barred by time;

30 (c) unless provision is made by the law of the foreign State or commonwealth country or in the extradition treaty with the foreign State or extradition arrangement with the commonwealth country, that the fugitive criminal shall not, until he has been restored or has had an opportunity of returning to India, be detained or tried in that State or country for any offence committed prior to his surrender or return, other than the extradition offence proved by the facts on which his surrender or
35 return is based;

(d) if he has been accused of some offence in India, not being the offence for which his surrender or return is sought, or is undergoing sentence under any conviction in India until

after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise;

(e) until after the expiration of fifteen days from the date of his being committed to prison by the magistrate.

CHAPTER II

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EXTRADITION OF FUGITIVE CRIMINALS TO FOREIGN STATES AND TO COMMONWEALTH COUNTRIES TO WHICH CHAPTER III DOES NOT APPLY

Requisition
for sur-
render.

5. A requisition for the surrender of a fugitive criminal of a foreign State or a commonwealth country may be made to the Central Government— 10

(a) by a diplomatic representative of the foreign State or commonwealth country at Delhi; or

(b) by the Government of that foreign State or commonwealth country communicating with the Central Government through its diplomatic representative in that State; 15

and if neither of these modes is convenient, the requisition shall be made in such other mode as is settled by arrangement made by the Government of the foreign State or commonwealth country with the Government of India. 20

Order for
magisterial
inquiry.

6. Where such requisition is made, the Central Government may, if it thinks fit, issue an order to any magistrate who would have had jurisdiction to inquire into the offence if it had been an offence committed within the local limits of his jurisdiction, directing him to inquire into the case. 25

Issue of
warrant for
arrest.

7. On receipt of an order of the Central Government under section 6, the magistrate shall issue a warrant for the arrest of the fugitive criminal.

Procedure
before
magistrate.

8. (1) When the fugitive criminal appears or is brought before the magistrate, the magistrate shall inquire into the case in the same manner and shall have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by a court of session or High Court. 30

(2) Without prejudice to the generality of the foregoing provisions, the magistrate shall, in particular, take such evidence as may be produced in support of the requisition of the foreign State or commonwealth country and on behalf of the fugitive criminal, 35

including any evidence to show that the offence of which the fugitive criminal is accused or has been convicted is an offence of political character or is not an extradition offence.

5 (3) If the magistrate is of opinion that a *prima facie* case is not made out in support of the requisition of the foreign State or Commonwealth country, he shall discharge the fugitive criminal.

(4) If the magistrate is of opinion that a *prima facie* case is made out in support of the requisition of the foreign State or commonwealth country, he may commit the fugitive criminal to prison to await the orders of the Central Government, and shall report the result of his inquiry to the Central Government; and shall forward together with such report, any written statement which the fugitive criminal may desire to submit for the consideration of the Central Government.

15 9. If, upon receipt of the report and statement under sub-section (4) of section 8, the Central Government is of opinion that the fugitive criminal ought to be surrendered to the foreign State or commonwealth country, it may issue a warrant for the custody and removal of the fugitive criminal and for his delivery at a place to be named in the warrant.

Surrender of fugitive criminal.

25 10. (1) Where it appears to any magistrate that a person within the local limits of his jurisdiction is a fugitive criminal of a foreign State or commonwealth country, he may, if he thinks fit, issue a warrant for the arrest of that person on such information or complaint and on such evidence as would, in his opinion, justify the issue of a warrant if the offence of which the person is accused or has been convicted had been committed within the local limits of his jurisdiction.

Power of magistrate to issue warrant of arrest in certain cases.

30 (2) The magistrate shall forthwith report the issue of a warrant under sub-section (1) to the Central Government and shall forward the information, complaint and the evidence or certified copies thereof to that Government.

(3) A person arrested on a warrant issued under sub-section 35 (1) shall not be detained for more than three months unless within that period the magistrate receives from the Central Government an order made with reference to such person under section 6.

40 11. (1) In any proceedings against a fugitive criminal of a foreign State or commonwealth country under this Chapter, exhibits and depositions (whether received or taken in the presence of the person against whom they are used or not) and copies thereof and official certificates of facts and judicial documents stating facts may, if duly authenticated, be received as evidence.

Receipt in evidence of exhibits, depositions and other documents and authentication thereof.

(2) Warrants, depositions or statements on oath, which purport to have been issued or taken by any court of justice outside India or copies thereof, certificates of, or judicial documents stating the facts of, conviction before any such court shall be deemed to be duly authenticated if—

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(a) the warrant purports to be signed by a judge, magistrate or officer of the State or country where the same was issued or acting in or for such State or country;

(b) the depositions or statements or copies thereof purport to be certified, under the hand of a judge, magistrate or officer of the State or country where the same were taken, or acting in or for such State or country, to be the original depositions or statements or to be true copies thereof, as the case may require;

(c) the certificate of, or judicial document stating the fact of, a conviction purports to be certified by a judge, magistrate or officer of the State or country where the conviction took place or acting in or for such State;

(d) the warrants, depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of a minister of the State or country where the same were respectively issued, taken or given.

Chapter not
to apply to
common-
wealth
countries
to which
Chapter III
applies.

12. Nothing contained in this Chapter shall apply to fugitive criminals of a commonwealth country to which Chapter III applies.

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CHAPTER III

RETURN OF FUGITIVE CRIMINALS TO COMMONWEALTH COUNTRIES WITH EXTRADITION ARRANGEMENTS

Application
of Chapter.

13. (1) This Chapter shall apply only to any such commonwealth country to which, by reason of an extradition arrangement entered into with that country, it may seem expedient to the Central Government to apply the same.

(2) Every such application shall be by notified order, and the Central Government may, by the same or any subsequent order, direct that this Chapter and Chapters I, IV and V shall, in relation to any such commonwealth country, apply subject to such modifications, exceptions, conditions and qualifications as it may think

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fit to specify in the order for the purpose of implementing the arrangement.

(3) Every notified order made under this section shall be laid before each House of Parliament, as soon as may be, after it is made.

14. Where a fugitive criminal of any commonwealth country to which this Chapter applies is found in India, he shall be liable to be apprehended and returned in the manner provided by this Chapter to that commonwealth country.

Liability of fugitive criminals from commonwealth countries to be apprehended and returned.

15 10 15. A fugitive criminal may be apprehended in India under an endorsed warrant or a provisional warrant.

Endorsed and provisional warrants.

16. Where a warrant has been issued for the apprehension of a fugitive criminal in any commonwealth country to which this Chapter applies and such fugitive criminal is, or is suspected to be, in India, the Central Government may, if satisfied that the warrant was issued by a person having lawful authority to issue the same, endorse such warrant in the manner prescribed, and the warrant so endorsed shall be sufficient authority to apprehend the person named in the warrant and to bring him before any magistrate in India.

Endorsed warrant for apprehension of fugitive criminal.

20 25 17. (1) Any magistrate may issue a provisional warrant for the apprehension of a fugitive criminal from any commonwealth country to which this Chapter applies who is, or is suspected to be, in or on his way to India, on such information and under such circumstances as would, in his opinion, justify the issue of a warrant, if the offence of which the fugitive criminal is accused had been committed within his jurisdiction and such warrant may be executed accordingly.

Provisional warrant for apprehension of fugitive criminal.

(2) A magistrate issuing a provisional warrant shall forthwith send a report of the issue together with the information or a certified copy thereof to the Central Government, and the Central Government may, if it thinks fit, discharge the person apprehended under such warrant.

(3) A fugitive criminal apprehended on a provisional warrant may, from time to time, be remanded for such reasonable time, not exceeding seven days at any one time, as under the circumstances seems requisite for the production of an endorsed warrant.

Dealing with fugitive criminal when apprehended.

18. If the magistrate, before whom a person apprehended under this Chapter is brought, is satisfied that the endorsed warrant for the apprehension of the fugitive criminal is duly authenticated and that the offence of which the person is accused is an extradition offence, the magistrate shall commit the fugitive criminal to prison to await his return and shall forthwith send a certificate of the committal and such report of the case as he may think fit, to the Central Government.

Return of fugitive criminal by warrant.

19. The Central Government may, at any time after a fugitive criminal has been committed to prison under this Chapter, issue a warrant for the custody and removal to the commonwealth country concerned of the fugitive criminal and for his delivery at a place to be named in the warrant.

CHAPTER IV

SURRENDER OR RETURN OF ACCUSED OR CONVICTED PERSONS FROM FOREIGN STATES OR COMMONWEALTH COUNTRIES

Mode of requisition or form of warrant for the surrender or return to India of accused or convicted person who is in a foreign State or commonwealth country.

20. (1) A requisition for the surrender of a person accused or convicted of an extradition offence committed in India and who is, or is suspected to be, in any foreign State or a commonwealth country to which Chapter III does not apply, may be made by the Central Government—

(a) to a diplomatic representative of that State or country at Delhi; or

(b) to the Government of that State or country through the diplomatic representative of India in that State or country;

and if neither of these modes is convenient, the requisition shall be made in such other mode as is settled by arrangement made by the Government of India with that State or country.

(2) A warrant issued by a magistrate in India for the apprehension of any person who is, or is suspected to be, in any commonwealth country to which Chapter III applies shall be in such form as may be prescribed.

Conveyance of accused or convicted person surrendered or returned.

21. Any person accused or convicted of an extradition offence who is surrendered or returned by a foreign State or commonwealth country may, under the warrant of arrest for his surrender or return issued in such State or country, be brought into India and delivered to the proper authority to be dealt with according to law.

22. Whenever any person accused or convicted of an offence, which, if committed in India would be an extradition offence, is surrendered or returned by a foreign State or commonwealth country, that person shall not, until he has been restored or has had an opportunity of returning to that State or country, be tried in India for an offence committed prior to the surrender or return, other than the extradition offence proved by the facts on which the surrender or return is based.

Accused or convicted person surrendered or returned by foreign State or commonwealth country not to be tried for previous offence.

CHAPTER V

MISCELLANEOUS

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23. Every fugitive criminal of a foreign State or commonwealth country shall, subject to the provisions of this Act, be liable to be arrested and surrendered or returned, whether the offence in respect of which the surrender or return is sought was committed before or after the commencement of this Act, and whether or not a court in India has jurisdiction to try that offence.

Liability of fugitive criminals to be arrested and surrendered or returned.

24. Where the offence in respect of which the surrender or return of a fugitive criminal is sought was committed on board any vessel on the high seas which comes into any port of India, the Central Government and any magistrate having jurisdiction in such port may exercise the powers conferred by this Act.

Jurisdiction as to offences committed at sea.

25. If a fugitive criminal who, in pursuance of this Act, has been committed to prison to await his return to any foreign State or commonwealth country is not conveyed out of India within three months after such committal, the High Court, upon application made to it by or on behalf of the fugitive criminal and upon proof that reasonable notice of the intention to make such application has been given to the Central Government, may order such prisoner to be discharged unless sufficient cause is shown to the contrary.

Discharge of person apprehended if not returned within three months.

5 of 1898.

26. In the case of a person who is a fugitive criminal arrested or detained under this Act, the provisions of the Code of Criminal Procedure, 1898, relating to bail shall apply in the same manner as they would apply if such person were accused of committing in India the offence of which he is accused or has been convicted.

Release of persons arrested on bail.

27. A fugitive criminal who is accused or convicted of abetting any extradition offence shall be deemed for the purposes of this Act to be accused or convicted of having committed such offence and shall be liable to be arrested and surrendered accordingly.

Abetment of extradition offences.

Lawfulness
of, and
retaking
on escape
from, cus-
tody under
warrants.

28. It shall be lawful for any person to whom a warrant is directed for the apprehension of a fugitive criminal to hold in custody and convey the person mentioned in the warrant to the place named in the warrant, and if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re- 5 taken as a person accused of an offence against the law of India may be retaken upon an escape.

Property
found on
fugitive
criminal.

29. Everything found in the possession of a fugitive criminal at the time of his arrest which may be material as evidence in proving the extradition offence may be delivered up with the fugitive 10 criminal on his surrender or return, subject to the rights, if any, of third parties with respect thereto.

Power of
Central Go-
vernment to
discharge
any fugitive
criminal in
custody.

30. If it appears to the Central Government that by reason of the trivial nature of the case or by reason of the application for the surrender or return of a fugitive criminal not being made in good 15 faith or in the interests of justice or for political reasons or otherwise, it is unjust or inexpedient to surrender or return the fugitive criminal, it may, by order, at any time stay any proceedings under this Act and direct any warrant issued or endorsed under this Act to be cancelled and the person for whose arrest the warrant has been 20 issued or endorsed to be discharged.

Simulta-
neous requi-
sitions.

31. If requisitions for the surrender of a fugitive criminal are received from more than one foreign State or a commonwealth country or from any foreign State and any commonwealth country, the Central Government may, having regard to the circumstances of the 25 case, surrender the fugitive criminal to such State or country as that Government thinks fit.

Act not to
affect the
Foreigners
Act, 1946.

32. Nothing in this Act shall affect the provisions of the Foreigners Act, 1946, or any order made thereunder.

31 of 1946

Notified
orders to
be laid
before
Parliament.

33. Every notified order made under this Act shall, as soon as may 30 be after it is made, be laid before each House of Parliament.

Power to
make rules.

34. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the follow- 35 ing matters, namely:—

(a) the form in which a requisition for the surrender of a fugitive criminal may be made;

(b) the form in which a warrant for the apprehension of any person in a commonwealth country to which Chapter III applies may be made;

5 (c) the manner in which any warrant may be endorsed or authenticated under this Act;

(d) the removal of fugitive criminals accused or in custody under this Act and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them;

10 (e) the seizure and disposition of any property which is the subject of, or required for proof of, any alleged offence to which this Act applies;

15 (f) the form and manner in which or the channel through which a magistrate may be required to make his report to the Central Government under this Act;

(g) any other matter which has to be or may be prescribed.

(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised
20 in one session or in two successive sessions, and before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect,
25 as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

15 of 1903. 35. (1) The Indian Extradition Act, 1903, and any law corresponding thereto in force at the commencement of this Act in the territories
30 which, immediately before the 1st day of November, 1956, were comprised in Part B States and the North East Frontier Agency and Tuensang District (Extradition) Regulation, 1961, are hereby repealed.

Repeals and savings.

33 and 34
Vict. c. 52;
36 and 37
Vict. c. 60;
6 Edw. 7, c.
15; 22 and
23 Geo. 5,
c. 39.

44 and 45
Vict. c. 69.

35 (2) The Extradition Acts, 1870 to 1932 and the Fugitive Offenders Act, 1881, in so far as they apply to and operate as part of the law of India, are hereby repealed.

THE FIRST SCHEDULE

[See section 2(a)]

The following are commonwealth countries:—

- | | |
|--|----|
| 1. Commonwealth of Australia. | |
| 2. Canada. | 5 |
| 3. Ceylon. | |
| 4. Cyprus. | |
| 5. Federation of Malaya. | |
| 6. Federation of Rhodesia and Nyasaland. | |
| 7. Ghana. | 10 |
| 8. New Zealand. | |
| 9. Nigeria. | |
| 10. Pakistan. | |
| 11. Sierra Leone. | |
| 12. Singapore. | 15 |
| 13. United Kingdom. | |

THE SECOND SCHEDULE

[See section 2 (c) (ii)]

Extradition offences in relation to foreign States other than treaty States or commonwealth countries to which Chapter III does not apply.

- The following list of extradition offences is to be construed according to the law in force in India on the date of the alleged offence. Wherever the names of the relevant Acts are not given, the sections referred to are the sections of the Indian Penal Code, (45 of 1860):—
- 10 1. Culpable homicide (sections 299 to 304).
 2. Attempt to murder (section 307).
 3. Causing miscarriage and abandonment of child (sections 312 to 317).
 - 15 4. Kidnapping, abduction, slavery and forced labour (sections 360 to 374).
 5. Rape and unnatural offences (sections 375 to 377).
 6. Theft, extortion, robbery and dacoity (sections 378 to 402).
 7. Criminal misappropriation and criminal breach of trust (sections 403 to 414).
 - 20 8. Cheating (sections 415 to 420).
 9. Mischief (sections 425 to 440).
 10. Forgery, using forged documents and other offences relating to false documents (sections 463 to 477A).
 11. Offences relating to coins and stamps (sections 230 to 263A).
 - 25 12. Piracy by law of nations committed on board of or against a vessel of a foreign State.
 13. Sinking or destroying a vessel at sea or attempting or conspiring to do so.
 - 30 14. Assault on board a vessel on the high seas with intent to destroy life or to do grievous bodily harm.

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15. Revolt or conspiracy to revolt by two or more persons on board a vessel on the high seas against the authority of the master.
 16. Smuggling of gold, gold manufactures, diamonds and other precious stones or of any narcotic substance (section 167, entry 8 in column 2 of Schedule, Sea Customs Act, 1878 (8 of 1878). 5
 17. Immoral traffic in women and girls (sections 4, 5, 6 and 8 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956). 10
 18. Any offence against any other section of the Indian Penal Code or against any other law which may, from time to time, be specified by the Central Government by notification in the Official Gazette either generally for all States or specially for one or more States. 15

THE THIRD SCHEDULE

[See section 2 (c) (iii)]

EXTRADITION OFFENCES IN RELATION TO COMMONWEALTH COUNTRIES TO WHICH CHAPTER III APPLIES.

5 The following list of extradition offences is to be construed according to the law in force in India on the date of the alleged offence:—

1. Piracy.
2. Treason.
- 10 3. Smuggling of gold, gold manufactures, diamonds and other precious stones or of any narcotic substance [Section 167, entry 8 in column 2 of Schedule, Sea Customs Act, 1878 (8 of 1878)].
- 15 4. Immoral traffic in women and girls [sections 4, 5, 6 and 8 of the Supression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956)].
5. Any offence which, if committed in India, would be punishable under any section of the Indian Penal Code with rigorous imprisonment for a term of twelve months or more or with death.
- 20 6. Any offence against any other section of the Indian Penal Code or against any other law which may, from time to time, be specified by the Central Government by notification in the Official Gazette either generally for all States or specially for one or more States.

STATEMENT OF OBJECTS AND REASONS

At present, the law of extradition applicable to India is to be found scattered in the United Kingdom Extradition Acts, 1870 to 1932, the Fugitive Offenders Act, 1881, and the Indian Extradition Act, 1903. The United Kingdom Extradition Act, 1870, in its application to India, authorised the extradition of fugitive offenders between India and 'foreign States', a term which meant States to which that Act was made applicable by Her Britannic Majesty's Order in Council. The Fugitive Offenders Act, 1881, on the other hand, provided a method whereby extradition of fugitive offenders could be effected between the British dominions and possessions by a simplified form of procedure. The Indian Extradition Act, 1903, modified and supplemented the other laws by—

(a) prescribing the procedure for the surrender of fugitive criminals in the case of 'foreign States';

(b) providing a special machinery for the surrender of fugitive criminals in case of States other than 'foreign States'; and

(c) specifying the officers in India who may exercise the powers conferred by the Fugitive Offenders Act, 1881.

2. The Indian Extradition Act, 1903, was not extended to Part B States in 1951 when the Part B States (Laws) Act, 1951, was enacted as it was felt even then that this should be done by a separate law, after a proper examination of the position. The result is that the legal position relating to the surrender of fugitive criminals to 'foreign States' and commonwealth countries under the existing law from the erstwhile Part B States is somewhat doubtful. Further, the Supreme Court, in its judgment in the State of Madras vs. C.G. Menon reported in (1955) Supreme Court Reporter 280, has held that after India became a Republic, the Fugitive Offenders Act, 1881 has ceased to apply to India. Moreover, the present law relating to extradition contains certain lacunae on questions such as concurrent requests for the surrender of a fugitive criminal from more than one State.

3. The purpose of this Bill is to remove all such anomalies and fill in the lacunae that exist at present in the law relating to extradition and enact a consolidated and amended law for the extradition of fugitive criminals to all foreign States and commonwealth countries.

4. The Notes on Clauses explain in detail the various provisions of the Bill.

NEW DELHI;

JAWAHARLAL NEHRU.

The 3rd August, 1961.

Notes on Clauses

Clause 2.—Sub-clause (a).—Definition of commonwealth country is more or less on the same lines as in the Citizenship Act, 1955. A few more countries which have gained independence have been added in the First Schedule.

Sub-clause (b).—Certain foreign laws like the French provide for the condemnation of an accused person *par contumace* but such condemnation is annulled if the accused person appears before the court, when his trial begins afresh. Such a person is correctly described as an accused person and not as a convicted person for the purposes of the extradition law. Sub-clause (a) of this clause is intended to clarify this position and follows similar definitions in the United Kingdom and Canadian Acts.

Sub-clause (c).—The expression “extradition offence” is so defined as to mean, in relation to a foreign State being a treaty State any offence specified in the treaty with that State, in relation to a foreign State other than a treaty State or in relation to a commonwealth country to which Chapter III does not apply, an offence specified in the Second Schedule, and in relation to a commonwealth country to which Chapter III applies, an offence specified in the Third Schedule.

Sub-clause (d).—The definition of “extradition treaty” covers even pre-Independence treaties.

Clause 3.—This clause covers all States outside India including commonwealth countries to which Chapter III does not apply. The Act can become operative in relation to such States only on the issue of a notified order. Provision has been made in the clause whereby it may be possible to make this Act effective only in relation to certain parts of India. In regard to a treaty State, power has also been taken to render the application of the Act subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the treaty with that State.

Clause 4.—This clause contains the usual restrictions on surrender. The period of fifteen days specified in sub-clause (c) of this clause would enable a fugitive criminal to move the appropriate court for his release by filing a writ petition of *habeas corpus*.

Clause 5.—This clause prescribes the channel through which a requisition for the surrender of a fugitive criminal of a foreign

State or a commonwealth country may be made to the Central Government.

Clause 6.—This clause empowers the Central Government to issue an order to a magistrate having jurisdiction to enquire into the offence in respect of which requisition has been received under clause 5. This clause follows sub-section (1) of section 3 of the Extradition Act, 1903.

Clauses 7 and 8.—These clauses prescribe the procedure to be followed by a magistrate when order is received by him under clause 6. These clauses more or less are based on sub-sections (2), (3), (4) and (6) of section 3 of the Indian Extradition Act, 1903.

Clause 9.—This clause is based on sub-section (8) of section 3 of the Indian Extradition Act, 1903.

Clause 10.—This clause more or less reproduces section 4 of the Indian Extradition Act, 1903.

Clause 11.—This clause reproduces section 17 of the Indian Extradition Act, 1903.

Clause 12.—This clause makes it clear that Chapter II will not apply in respect of fugitive criminals of a commonwealth country to which Chapter III applies.

Clause 13.—This clause makes it clear that Chapter III will apply only to such of the commonwealth countries as have entered into extradition arrangements with the Central Government. Sub-clause (2) of this clause further provides that every such application shall be by notified order. The Central Government is further empowered to apply the provisions of Chapter III and other Chapters in relation to any such commonwealth country subject to such modifications, exceptions, conditions and qualifications as it may think fit to specify for the purposes of implementing the arrangement.

Clause 14.—This clause makes it clear that a fugitive criminal of a commonwealth country to which Chapter III is made applicable shall be liable to be apprehended and returned in the manner provided in the said Chapter.

Clause 16.—This clause follows section 13 of the Fugitive Offenders Act, 1881.

Clause 17.—Sub-clause (1) of this clause follows section 16 of the Fugitive Offenders Act, 1881. Sub-clause (2) requires a magistrate issuing a provisional warrant under sub-clause (1) to report the issue of such warrant to the Central Government.

Clauses 18 and 19.—Clause 18 reproduces to a certain extent the provisions of section 14 of the Fugitive Offenders Act, 1881 but clause 19 makes it clear that the power of returning the fugitive criminal to the commonwealth country concerned will lie with the Central Government.

Clause 20.—This clause prescribes the channel for requisition for the surrender of a person accused or convicted of an extradition offence committed in India and who is or is suspected to be in any foreign State or a commonwealth country to which Chapter III does not apply.

Clause 22.—This clause is based on section 19 of the United Kingdom Extradition Act, 1870.

Clause 23.—This clause states the liability of a fugitive criminal in express terms even with regard to offences committed before the commencement of the Act. The clause corresponds to a certain extent section 16 of the Indian Extradition Act, 1903.

Clause 24.—This clause follows section 20 of the Indian Extradition Act, 1903.

Clause 25.—This clause is self-explanatory.

Clause 26.—This clause follows sub-section (4) of section 10 of the Indian Extradition Act, 1903.

Clause 27.—This clause follows section 13 of the Indian Extradition Act, 1903.

Clause 28.—This clause follows section 3(9) and section 14 of the Indian Extradition Act, 1903.

Clause 30.—This clause follows section 10 of the Fugitive Offenders Act, 1881 with this difference that power under that section is exercisable by a court whereas the power under this clause is exercisable by the Central Government.

Clause 31.—This clause makes a provision to meet a contingency when the surrender of a fugitive criminal has been requested by more than one State simultaneously. The clause is based mainly on the fact that there are quite a number of offences which consist of a series of penal transactions each one of which may be completed or originated in one or more States separately. Under this clause the Central Government would decide to which State or country a fugitive criminal may be surrendered after taking into consideration all the circumstances of the case, namely, the respective dates on which the requisitions were received, the relative gravity of the offences alleged and the like.

Clauses 32 and 33.—The clauses are self-explanatory.

FINANCIAL MEMORANDUM

Proceedings for extradition of fugitive criminals to foreign States and commonwealth countries under the Bill would involve arrest of the fugitive criminal, an enquiry by a Magistrate and in some cases the removal of the fugitive criminal and his delivery to the foreign State or commonwealth country. Such proceedings will also involve the detention of the fugitive criminal in police/jail custody, and the State shall have to involve expenditure during such detention/custody. In so far as the Union territories are concerned, such expenditure will be met from the Consolidated Fund of India. It is not possible to estimate the amount of expenditure from the Consolidated Fund of India as that amount will depend on the number of requests for extradition that may be received in any given period.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 34 of the Bill empowers the Central Government to make rules by notification in the Official Gazette to carry out the purposes of the Act. The matters in respect of which such rules may be made are specified therein.

2. Most of those matters are of a routine character. They *inter alia* relate to the form in which a requisition for the surrender of a fugitive criminal may be made, the form in which a warrant for the apprehension of any person in a commonwealth country to which Chapter III applies may be made, the manner in which any warrant may be endorsed or authenticated, the seizure and disposition of any property which is the subject of any extradition offence, and the form and manner in which or the channel through which a magistrate may be required to make his report to the Central Government.

3. Under clause 3(1), power is conferred on the Central Government to apply by notified order the provisions of the Act (other than Chapter III), to such foreign State or to such commonwealth country to which the provisions of Chapter III do not apply, as may be specified in that order. Under clause 3(2), however, power is reserved to the Central Government to restrict such application to fugitive criminals found in such part of India as may be specified in the order. As regards a treaty State, the Central Government has been empowered to make the application of the Act subject to such modifications and exceptions as may be deemed expedient for implementing the treaty with that State. The question to which countries or States the Act should be made applicable is a little difficult and complicated one. Reciprocity and other considerations such as terms of a treaty may have to be weighed. It is not possible to specify all such considerations in the Act. The Central Government has therefore been vested with the necessary power in this regard.

4. Under clause 13, power has been reserved to the Central Government to apply by notified order the provisions of Chapter III to such commonwealth countries as may enter into extradition arrangement with the Government of India. Power is also reserved to the Central Government to make the application of Chapter III and of Chapters I, IV and V subject to such modifications, exceptions, conditions and qualifications as may be specified in the order for the purpose of implementing the arrangement. It is not possible to

visualise at this stage what sort of extradition arrangement will be entered into by different commonwealth countries and consequently it is difficult to specify in the Act the modifications, exceptions, conditions and qualifications subject to which the Act may be made applicable.

5. Having regard to the circumstances under which powers under clauses 3 and 13 will be exercised by the Central Government, the powers delegated to it are of a normal character.

M. N. KAUL,
Secretary.